

FILED ENTERED  
LODGED RECEIVED

NOV 21 2003 DJ

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CARRIE SUZANNE WUERFEL,

and

JOHN ANDREW WUERFEL,  
husband and wife,

Plaintiffs,

v.

THE CITY OF SEATTLE,  
a municipal corporation,

and

PENELOPE A. FULMER, in her  
capacity as a police officer for the  
City of Seattle and as an individual,

and

COMPLAINT FOR DAMAGES - 1

CV03 36602  
NO.

COMPLAINT FOR DAMAGES



03-CV-03660-CMP

MUENSTER & KOENIG  
JOHN R. MUENSTER, INC., P.S.  
1111 THIRD AVE., SUITE 2220  
SEATTLE, WASHINGTON 98104  
(206) 467-7500  
FAX: (206) 467-0101

313705 Swiss

1 SARA SPRINGER, in her capacity as )  
 2 a police officer for the City of Seattle and )  
 3 as an individual, )  
 4 and )  
 5 DAVID GAVERNIK, in his capacity as )  
 6 a police officer for the City of Seattle )  
 7 and as an individual, )  
 8 Defendants. )  
 \_\_\_\_\_ )

9  
 10 INTRODUCTION

11  
 12 1. This is a civil action seeking damages against the above-named defendants.  
 13 The civil claims include common law tort causes of action, statutory causes of action, and  
 14 offenses committed under color of law resulting in a deprivation of rights secured by the  
 15 Constitution and laws of the United States of America.

16  
 17 JURISDICTION AND VENUE

18  
 19 2. This Court has personal and subject matter jurisdiction over plaintiffs'  
 20 federal civil rights claims under Title 42, United States Code, § 1983, and Title 28, United  
 21 States Code, §§ 1331 and 1343(a)(3).

22  
 23 3. This Court has pendent jurisdiction over plaintiffs' state law claims and over  
 24 defendants as to said claims, pursuant to Title 28, United States Code, § 1367 (Judicial  
 25 Improvements Act of 1990), Public Law No. 101-650, 104 Stat. 5089 (1990).

1           4.     The acts and omissions complained of herein occurred in King County,  
2  
3     Washington, and the defendants are residents and citizens of the State of Washington.

4           5.     Plaintiffs are residents and citizens of the state of Washington.

5           6.     Venue in this Court is proper pursuant to Title 28, United States Code, §  
6     1391.

7  
8                                 PARTIES

9  
10          7.     Plaintiff Carrie S. Wuerfel is a citizen of the United States and a citizen and  
11     resident of the state of Washington.

12          8.     Plaintiff John A. Wuerfel is a citizen of the United States and a citizen and  
13     resident of the state of Washington.

14  
15          9.     At all times material to this complaint, defendant Penelope Fulmer was a  
16     police officer employed by defendant City of Seattle. At all times material to this  
17     complaint, defendant Penelope Fulmer was an agent and employee of defendant City of  
18     Seattle and was acting within the scope of her employment with the City of Seattle, under  
19     color of the laws of the State of Washington.

20  
21          10.    Defendant Penelope Fulmer is sued in her individual capacity and in her  
22     official capacity as an agent and employee of defendant City of Seattle.

23          11.    At all times material to this complaint, defendant Sara Springer was a police  
24     officer employed by defendant City of Seattle. At all times material to this complaint,  
25     defendant Sara Springer was an agent and employee of defendant City of Seattle and was  
26

1 acting within the scope of her employment with the City of Seattle, under color of the laws  
2 of the State of Washington.  
3

4 12. Defendant Sara Springer is sued in her individual capacity and in her official  
5 capacity as an agent and employee of defendant City of Seattle.

6 13. At all times material to this complaint, defendant David Gavernik was a  
7 police officer employed by defendant City of Seattle. At all times material to this  
8 complaint, defendant David Gavernik was an agent and employee of defendant City of  
9 Seattle and was acting within the scope of his employment with the City of Seattle, under  
10 color of the laws of the State of Washington.  
11

12 14. Defendant David Gavernik is sued in his individual capacity and in his  
13 official capacity as an agent and employee of defendant City of Seattle.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

FACTUAL ALLEGATIONS

15. On November 23, 2001, plaintiffs Carrie Wuerfel and John Wuerfel lived in their residence at 9546 - 46<sup>th</sup> Avenue Northeast in Seattle, Washington, hereinafter referred to as the Wuerfel family home.

16. Carrie and John Wuerfel were the franchise operators of an ice cream store.

17. At approximately 11:27 p.m. on November 23<sup>rd</sup>, a caller telephoned 911 and reported that she heard sounds of a disturbance in the Wuerfel family home. The caller reported that a female at the residence had blonde hair.

18. Defendants Fulmer and Gavernik went to the Wuerfel family home and arrived there at 12:45 a.m., one hour and 13 minutes later.

19. Defendants Fulmer and Gavernik went to the front door of the home. They did not hear anything. There were no sounds of a struggle or sounds of people in distress or sounds of things breaking.

20. The officers did not interview the caller and had no personal knowledge of the caller's reliability or basis of knowledge.

21. Defendant Fulmer knocked on the door, waited, and knocked again. She heard a male say "hold on a minute". Plaintiff Carrie Wuerfel answered the door. She did not answer the description that the officer had received via radio.

22. Officer Fulmer asked Carrie Wuerfel if everything was okay and the response was "yes".

23. At that point, Officer Fulmer entered the Wuerfel family home over plaintiff

1 Carrie Wuerfel's objection. Plaintiff John Wuerfel told Officer Fulmer that she could not  
2 come in because she did not have a search warrant.  
3

4 24. Defendant Fulmer forced her way into the Wuerfel family home, followed  
5 by defendant Gavernik.

6 25. The entry was done without a warrant.

7 26. Plaintiff Carrie Wuerfel dialed 911 to report Fulmer's actions and stated she  
8 wanted to call her attorney.  
9

10 27. The officers saw no injuries to either plaintiff Carrie Wuerfel or plaintiff  
11 John Wuerfel.

12 28. Defendant Fulmer began to conduct a frisk of plaintiff John Wuerfel.

13 29. Carrie Wuerfel called 911. She was approached by defendant Fulmer, who  
14 told her that she had to get off the phone. The 911 operator dispatched a Seattle Police  
15 Department supervisor to the scene.  
16

17 30. Defendants arrested plaintiffs Carrie and John Wuerfel. During the arrest  
18 process, defendant Fulmer unreasonably caused bodily injury to John Wuerfel.  
19

20 31. Defendants did not have probable cause to arrest the plaintiffs.

21 32. The arrest was screened and approved by defendant Springer.

22 33. Defendants knew or should have know that there was no probable cause to  
23 arrest the plaintiffs.

24 34. Defendants transported plaintiffs Carrie and John Wuerfel to the King  
25 County jail and incarcerated them there.  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

35. Plaintiffs were subsequently prosecuted in Seattle Municipal Court regarding the incident. Through their retained attorney, plaintiffs moved to suppress based upon the unlawful police entry. The municipal court judge ruled that the police entry violated the plaintiffs' right to be free of unreasonable searches in their homes under the Constitutions of the United States and the State of Washington. The judge granted the motion to suppress. The charges against the plaintiffs were dismissed with prejudice.

36. As a proximate cause of the acts and omissions of defendants, plaintiffs suffered personal injuries, including, but not limited to, bodily injury, pain and suffering, loss of liberty, emotional distress and other consequential damages.

FIRST CAUSE OF ACTION:  
VIOLATION OF THE FOURTH AMENDMENT PROHIBITION  
AGAINST UNREASONABLE SEIZURES

37. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and every allegation of paragraphs 1 through 36.

38. The acts and omissions of defendants herein were done under color of state law, custom or usage.

39. Carrie Wuerfel was seized, for purposes of the Fourth Amendment to the United States Constitution, by the acts and omissions of defendants set forth herein.

40. Carrie Wuerfel had a federally-protected right, under the Fourth Amendment, not to be subjected to an unreasonable seizure.

1           41. The acts and omissions of defendants herein proximately caused the  
2 deprivation of the Fourth Amendment rights of Carrie Wuerfel.  
3

4           42. John Wuerfel was seized, for purposes of the Fourth Amendment to the  
5 United States Constitution, by the acts and omissions of defendants set forth herein.  
6

7           43. John Wuerfel had a federally-protected right, under the Fourth Amendment,  
8 not to be subjected to an unreasonable seizure.  
9

10           44. The acts and omissions of defendants herein proximately caused the  
11 deprivation of the Fourth Amendment rights of John Wuerfel.  
12

13           45. As a proximate result of the acts and omissions of defendants and  
14 deprivation of plaintiffs' Fourth Amendment rights, plaintiff suffered personal injuries as  
15 set forth hereinabove.  
16

17                           SECOND CAUSE OF ACTION:  
18                           WARRANTLESS ENTRY INTO HOME WITHOUT  
19                           WARRANT IN VIOLATION OF THE FOURTH AMENDMENT  
20

21           46. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and  
22 every allegation of paragraphs 1 through 45.  
23

24           47. The acts and omissions of defendants herein were performed under color  
25 of state law, custom or usage.  
26

27           48. Carrie Wuerfel and John Wuerfel had a federally-protected right under the  
28 Fourth Amendment to the United States Constitution not to have their home entered  
without a warrant.



1           49. The acts and omissions of defendants herein proximately caused the  
2 deprivation of the Fourth Amendment rights of the plaintiffs.  
3

4           50. As a proximate cause of the acts and omissions of defendants and  
5 deprivation of plaintiffs' Fourth Amendment rights, plaintiffs suffered personal injuries as  
6 set forth hereinabove.  
7

8                               THIRD CAUSE OF ACTION:  
9                               ARREST WITHOUT PROBABLE CAUSE  
10                              IN VIOLATION OF THE FOURTH AMENDMENT

11           51. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and  
12 every allegation of paragraphs 1 through 50.  
13

14           52. The acts and omissions of defendants herein were performed under color  
15 of state law, custom or usage.

16           53. Carrie Wuerfel was arrested, for purposes of the Fourth Amendment, when  
17 she was seized, handcuffed, and taken into custody.

18           54. Carrie Wuerfel had a federally-protected right, under the Fourth  
19 Amendment, not to be arrested by defendants without probable cause.  
20

21           55. The defendants lacked probable cause to arrest Carrie Wuerfel.

22           56. The acts and omissions of defendants herein, and each of them, proximately  
23 caused the deprivation of Carrie Wuerfel's Fourth Amendment rights.

24           57. John Wuerfel was arrested, for purposes of the Fourth Amendment, when  
25 he was seized, handcuffed, and taken into custody.  
26

1  
2 58. John Wuerfel had a federally-protected right, under the Fourth Amendment,  
3 not to be arrested by defendants without probable cause.

4 59. The defendants lacked probable cause to arrest John Wuerfel.

5 60. The acts and omissions of defendants herein, and each of them, proximately  
6 caused the deprivation of John Wuerfel's Fourth Amendment rights.

7  
8 61. As a proximate result of the acts and omissions of defendants and  
9 deprivation of plaintiffs' Fourth Amendment rights, plaintiffs suffered personal injuries as  
10 set forth hereinabove.

11  
12 FOURTH CAUSE OF ACTION:  
13 VIOLATION OF FOURTH AMENDMENT PROHIBITION  
14 AGAINST THE USE OF UNREASONABLE FORCE

15 62. Plaintiff John Wuerfel hereby incorporates and realleges as if fully set forth  
16 herein each and every allegation of paragraphs 1 through 61.

17 63. The acts and omissions of defendants herein were done under color of state  
18 law, custom or usage.

19 64. John Wuerfel was seized, for purposes of the Fourth Amendment to the  
20 United States Constitution, by the acts and omissions of defendants as set forth herein.

21 65. John Wuerfel had a federally-protected right, under the Fourth Amendment,  
22 not to be subjected to the use of unreasonable force against his person.

23 66. The acts and omissions of defendants herein proximately caused the  
24 deprivation of John Wuerfel's Fourth Amendment rights.  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

67. As a proximate result of the acts and omissions of defendants and deprivation of plaintiff's Fourth Amendment rights, plaintiff John Wuerfel suffered personal injuries as described hereinabove.

FIFTH CAUSE OF ACTION:  
MUNICIPAL LIABILITY OF THE CITY OF SEATTLE

68. Plaintiffs hereby incorporate and reallege as though fully set forth herein each and every allegation of paragraphs 1 through 67.

69. At all times material to this complaint, defendant City of Seattle, by and through its chief of police, had in effect certain explicit and *de facto* policies, practices and customs which were applied to the warrantless entry of the Wuerfel family home and the detention and arrest of Carrie and John Wuerfel.

70. For purposes of the incident described herein, it was the policy, custom and practice of the City of Seattle to arrest and detain the plaintiffs without probable cause in violation of their Fourth Amendment rights as set forth hereinabove.

71. It was further the policy of the City of Seattle, by and through its chief of police to approve, acquiesce, condone and ratify the unreasonable seizure and detention of the plaintiffs in the incident described hereinabove, in violation of their Fourth Amendment rights.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

72. For purposes of liability for said policies, practices and/or customs, the chief of police was the authorized policy-maker on police matters, and his decisions, explicit and *de facto*, were and are binding on defendant City of Seattle.

73. The policy, practice and custom of approving, acquiescing in, condoning and/or ratifying the unreasonable seizure and detention of the plaintiffs in the incident described herein, in violation of their Fourth Amendment rights, was a deliberate choice by defendant City of Seattle, by and through its mayor and/or chief of police.

74. For purposes of the incident described herein, it was the policy, custom and practice of the City of Seattle to utilize unreasonable force in violation of the Fourth Amendment rights of plaintiff John Wuerfel in the arrest process, set forth hereinabove.

75. It was further the policy of the City of Seattle, by and through its chief of police, to approve, acquiesce, condone and ratify the use of unreasonable force in violation of the Fourth Amendment rights of the plaintiff in the incident described hereinabove.

76. For purposes of liability for said policies, practices and/or customs, the chief of police was the authorized policy-maker on police matters, and his decisions, explicit and *de facto*, were and are binding on defendant City of Seattle.

77. For purposes of the incident described herein, it was the policy, custom and practice of the City of Seattle to enter the plaintiffs' home without a warrant in violation of their Fourth Amendment rights as set forth hereinabove.

78. It was further the policy of the City of Seattle, by and through its chief of police, to approve, acquiesce, condone and ratify the warrantless entry into the home of

1 the plaintiffs in the incident described hereinabove, in violation of their Fourth Amendment  
2 rights.  
3

4 79. For purposes of liability for said policies, practices and/or customs, the  
5 chief of police was the authorized policy-maker on police matters, and his decisions,  
6 explicit and *de facto*, were and are binding on defendant City of Seattle.  
7

8 80. The policy, practice and custom of approving, acquiescing in, condoning  
9 and/or ratifying the warrantless entry into the home of the plaintiffs in the incident  
10 described herein, in violation of their Fourth Amendment rights, was a deliberate choice  
11 by defendant City of Seattle, by and through its chief of police.  
12

13 81. These policies, practices and customs were maintained with deliberate,  
14 reckless and/or callous indifference to the constitutional rights of the plaintiffs as set forth  
15 hereinabove.  
16

17 82. The above-described policies, practices and customs of defendant City of  
18 Seattle proximately caused the deprivation of the Fourth Amendment rights of the  
19 plaintiffs.  
20

21 83. As a proximate result of the above-described policies, practices and customs  
22 of defendant City of Seattle, and as a result of the deprivation of plaintiffs' Fourth  
23 Amendment rights, plaintiffs suffered personal injuries as set forth hereinabove.  
24

25 84. At all times material herein, defendant City of Seattle had a duty, under the  
26 United States Constitution, to properly supervise Seattle police officers.  
27

1           85. At all times material herein, defendant City of Seattle had a duty, under the  
2 Fourth Amendment to the United States Constitution, to train Seattle police officers not to  
3 enter the plaintiffs' home without a warrant, arrest them without probable cause, or use  
4 unreasonable force in the arrest process.  
5

6           86. Defendant City of Seattle failed to properly supervise the individual  
7 defendants.  
8

9           87. Defendant City of Seattle failed to properly train the individual defendants.  
10

11           88. The above-described failures to supervise and train were maintained with  
12 deliberate, reckless and/or callous indifference to the constitutional rights of the plaintiffs  
13 as set forth hereinabove.

14           89. The above-described failures by defendants to properly supervise and to  
15 properly train the individual defendants proximately caused the deprivation of the  
16 constitutional rights of the plaintiffs as set forth hereinabove.

17           90. As a proximate result of the failure of defendants to properly supervise and  
18 train, and as a result of the deprivation of plaintiffs' constitutional rights, plaintiffs suffered  
19 personal injuries as set forth hereinabove.  
20

21                           SEVENTH CAUSE OF ACTION:  
22                           ASSAULT AND BATTERY  
23

24           91. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and  
25 every allegation of paragraphs 1 through 90.  
26

27 COMPLAINT FOR DAMAGES - 14  
28

**MUENSTER & KOENIG**  
**JOHN R. MUENSTER, INC., P.S.**  
1111 THIRD AVE., SUITE 2220  
SEATTLE, WASHINGTON 98104  
(206) 467-7500  
FAX: (206) 467-0101

1           92. Defendants assaulted and battered plaintiffs Carrie Wucrfel and John  
2 Wucrfel.  
3

4           93. Defendant City of Seattle is liable for the actions of the individual  
5 defendants under the doctrine of *respondeat superior*. Defendants Fulmer, Springer and  
6 Gavernik are not being sued in this cause of action.  
7

8           94. As a direct, proximate and foreseeable result of the wrongful actions  
9 described hereinabove, plaintiffs have been damaged in an amount in excess of the  
10 minimum jurisdiction of this Court.  
11

12                   EIGHTH CAUSE OF ACTION:  
13                   FALSE ARREST/FALSE IMPRISONMENT

14           95. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and  
15 every allegation of paragraphs 1 through 94.  
16

17           96. Defendants arrested and imprisoned plaintiffs Carrie Wucrfel and John  
18 Wucrfel without probable cause.

19           97. Defendant City of Seattle is liable for the actions of the individual  
20 defendants under the doctrine of *respondeat superior*. Defendants Fulmer, Springer and  
21 Gavernik are not being sued in this cause of action.  
22

23           98. As a direct, proximate and foreseeable result of the wrongful actions  
24 described hereinabove, plaintiffs have been damaged in an amount in excess of the  
25 minimum jurisdiction of this Court.  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PUNITIVE DAMAGES ALLEGATIONS

99. Plaintiff hereby incorporates and reallege as if fully set forth herein each and every allegation of paragraphs 1 through 98.

100. The acts and omissions of defendant Fulmer herein were motivated by evil motive or intent, or involved reckless or callous indifference to the constitutional rights of the plaintiffs as set forth hereinabove.

101. Defendant City of Seattle should indemnify defendant Fulmer for any damages awarded against her at the trial of this action, including punitive damages.

102. Defendant City of Seattle is responsible for the fault of defendant Fulmer because she was acting as an agent or servant of the City. Defendant City of Seattle is liable for all damages awarded against defendant Fulmer, including punitive damages. RCW 4.22.070(1)(a).

85. Since Carrie Wuerfel and John Wuerfel are fault-free plaintiffs, defendant City of Seattle is jointly and severally liable for all damages awarded, including punitive damages. RCW 4.22.070(1)(b).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for relief as follows:

Compensatory Damages: The defendants should be required to pay compensatory damages in an amount to be proven at trial.



DATED this the 1st day of November, 2003.

By:

**MUENSTER & KOENIG**  
**JOHN R. MUENSTER, INC., P.S.**  
 1111 THIRD AVE., SUITE 2220  
 SEATTLE, WASHINGTON 98104  
 (206) 467-7500  
 FAX: (206) 467-0101